

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/18/09

A Bill

HOUSE BILL 1914

5 By: Representative L. Cowling
6
7

For An Act To Be Entitled

9 AN ACT TO STABILIZE THE TAX ON UTILITIES FOR
10 AGRICULTURAL BUSINESSES BY REDUCING THE SALES AND
11 USE TAX ON THE PURCHASE PRICE AND LEVYING A
12 SPECIAL EXCISE TAX BASED ON THE VOLUME OF THE
13 UTILITY SOLD; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO STABILIZE THE TAX ON UTILITIES FOR
16 AGRICULTURAL BUSINESSES BY REDUCING THE
17 SALES AND USE TAX ON THE PURCHASE PRICE
18 AND LEVYING A SPECIAL EXCISE TAX BASED
19 ON THE VOLUME OF THE UTILITY SOLD.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. The introductory language of Arkansas Code § 26-52-301,
26 concerning the levy of the sales tax, is amended to read as follows:

27 Except for food and food ingredients that are taxed under § 26-52-317
28 and agricultural utilities that are taxed under § 26-52-322, there is levied
29 an excise tax of three percent (3%) upon the gross proceeds or gross receipts
30 derived from all sales to any person of the following:
31

32 SECTION 2. Arkansas Code § 26-52-302 is amended to read as follows:

33 26-52-302. Additional taxes levied.

34 (a)(1) In addition to the excise tax levied upon the gross proceeds or
35 gross receipts derived from all sales by this chapter, except for food and
36 food ingredients that are taxed under § 26-52-317 and agricultural utilities



1 that are taxed under § 26-52-322, there is levied an excise tax of one
2 percent (1%) upon all taxable sales of property and services subject to the
3 tax levied in this chapter.

4 (2) This tax shall be collected, reported, and paid in the same
5 manner and at the same time as is prescribed by law for the collection,
6 reporting, and payment of all other Arkansas gross receipts taxes.

7 (3) In computing gross receipts or gross proceeds as defined in
8 § 26-52-103, a deduction shall be allowed for bad debts resulting from the
9 sale of tangible personal property.

10 (b)(1) In addition to the excise tax levied upon the gross proceeds or
11 gross receipts derived from all sales by this chapter, except for food and
12 food ingredients that are taxed under § 26-52-317 and agricultural utilities
13 that are taxed under § 26-52-322, there is hereby levied an excise tax of
14 one-half of one percent (0.5%) upon all taxable sales of property and
15 services subject to the tax levied in this chapter.

16 (2) This tax shall be collected, reported, and paid in the same
17 manner and at the same time as is prescribed by law for the collection,
18 reporting, and payment of all other Arkansas gross receipts taxes.

19 (3) However, in computing gross receipts or gross proceeds as
20 defined in § 26-52-103, a deduction shall be allowed for bad debts resulting
21 from the sale of tangible personal property.

22 (c)(1) Except for food and food ingredients that are taxed under § 26-
23 52-317 and agricultural utilities that are taxed under § 26-52-322, there is
24 levied an additional excise tax of one-half of one percent (0.5%) upon all
25 taxable sales of property and services subject to the tax levied by this
26 chapter.

27 (2) The tax shall be collected, reported, and paid in the same
28 manner and at the same time as is prescribed by this chapter, for the
29 collection, reporting, and payment of Arkansas gross receipts taxes.

30 (d)(1) Except for food and food ingredients that are taxed under § 26-
31 52-317 and agricultural utilities that are taxed under § 26-52-322, there is
32 levied an additional excise tax of seven-eighths of one percent (0.875%) upon
33 all taxable sales of property and services subject to the tax levied by this
34 chapter.

35 (2) The tax shall be collected, reported, and paid in the same
36 manner and at the same time as prescribed by this chapter, for the

1 collection, reporting, and payment of Arkansas gross receipts taxes.

2
3 SECTION 3. Arkansas Code § 26-52-319(a)(4)(B), concerning the natural
4 gas and electricity used by manufacturers, is amended to read as follows:

5 (B) ~~Natural~~ Except as provided in § 26-52-322, natural gas
6 and electricity sold for any other purpose shall be subject to the full gross
7 receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-
8 (d).

9
10 SECTION 4. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended
11 to add an additional section to read as follows:

12 26-52-322. Agricultural utilities.

13 (a) As used in this section:

14 (1) "Qualifying agriculture, horticulture, or aquaculture
15 equipment" means:

16 (A) A cooling unit, a collection unit, or irrigation
17 equipment used in a commercial horticulture operation;

18 (B) Equipment used to pump and aerate a pond used in a
19 commercial aquaculture operation;

20 (C) A holding and sorting tank used in a commercial
21 aquaculture operation; and

22 (D) An on-farm grain dryer and agricultural irrigation
23 used for a commercial purpose;

24 (2) "Qualifying agricultural structure" means:

25 (A) Confinement housing for poultry or livestock used for
26 commercial production, including without limitation, a broiler or turkey
27 grow-out house, laying house, hatching unit, nursery unit, breeding house,
28 farrowing unit, and feed-out house; and

29 (B) A commercial milking facility, including without
30 limitation, a milking parlor, a milk collection unit, and a refrigeration
31 unit; and

32 (3) "Utility" means:

33 (A) Liquified-petroleum gas;

34 (B) Natural gas; or

35 (C) Electricity.

36 (b)(1) Beginning July 1, 2009, in lieu of the gross receipts or gross

1 proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an
2 excise tax on the gross receipts or gross proceeds derived from the sale of a
3 utility delivered by the seller and used by a qualifying agricultural
4 structure for a commercial purpose or a qualifying agriculture, horticulture,
5 or aquaculture equipment for a commercial purpose at the rate of one-eighth
6 percent (0.125%) to be distributed as follows:

7 (A) Seventy-six and six-tenths percent (76.6%) of the
8 taxes, interest, penalties, and costs received by the Director of the
9 Department of Finance and Administration under this subdivision (b)(1) shall
10 be deposited into the State Treasury as general revenues;

11 (B) Eight and five-tenths percent (8.5%) of the taxes,
12 interest, penalties, and costs received by the director under this
13 subdivision (b)(1) shall be deposited into the Property Tax Relief Trust
14 Fund; and

15 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
16 interest, penalties, and costs received by the director under this
17 subdivision (b)(1) shall be deposited into the Educational Adequacy Fund.

18 (2)(A) The excise tax levied in this section shall apply only to
19 a utility sold for use by a qualifying agricultural structure operated for
20 commercial purposes or a qualifying agriculture, horticulture, or aquaculture
21 equipment operated for commercial purposes.

22 (B) Except as provided in § 26-52-319, a utility sold for
23 any other purpose shall be subject to the full gross receipts or gross
24 proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-(d).

25 (3) The excise tax levied in this section shall be collected,
26 reported, and paid in the same manner and at the same time as is prescribed
27 by law for the collection, reporting, and payment of all other Arkansas gross
28 receipts taxes.

29 (c) A utility subject to the reduced excise tax rate levied in this
30 section shall be separately metered from a utility used for any other purpose
31 by the taxpayer or as otherwise established by the rules issued under
32 subsection (e) of this section.

33 (d) Before the purchase of a utility at the reduced excise tax rate
34 levied in this section, the director may require any seller of a utility to
35 obtain a certificate from the taxpayer, in the form prescribed by the
36 director, certifying that the taxpayer is eligible to purchase the utility at

1 the reduced excise tax rate.

2 (e) The director shall promulgate rules for the proper administration
3 of this section.

4 (f) The gross receipts or gross proceeds derived from the sale of a
5 utility to a taxpayer for use by a qualifying agricultural structure or
6 qualifying agriculture, horticulture, or aquaculture equipment shall continue
7 to be subject to:

8 (1) The excise tax levied under the Arkansas Constitution,
9 Amendment 75, § 2; and

10 (2) All municipal and county gross receipts taxes.

11
12 SECTION 5. Arkansas Code § 26-53-106(a), concerning the imposition and
13 rate of consumer use tax, is amended to read as follows:

14 (a) There is levied and there shall be collected from every person in
15 this state a tax or excise for the privilege of storing, using, distributing,
16 or consuming within this state any article of tangible personal property or
17 taxable service purchased for storage, use, distribution, or consumption in
18 this state at the rate of three percent (3%) of the sales price of the
19 property except for food and food ingredients that are taxed under § 26-53-
20 145 and agricultural utilities that are taxed under § 26-53-149.

21
22 SECTION 6. Arkansas Code § 26-53-107 is amended to read as follows:
23 26-53-107. Additional taxes levied.

24 (a)(1) In addition to the excise tax levied upon the privilege of
25 storing, using, distributing, or consuming tangible personal property and
26 taxable services within this state by this subchapter there is levied an
27 excise tax of one percent (1%) upon all tangible personal property and
28 taxable services subject to the tax levied in this subchapter except for food
29 and food ingredients that are taxed under § 26-53-145 and agricultural
30 utilities that are taxed under § 26-53-149.

31 (2) The tax shall be collected, reported, and paid in the same
32 manner and at the same time as is prescribed by law for the collection,
33 reporting, and payment of state compensating taxes.

34 (b)(1) In addition to the excise tax levied upon the privilege of
35 storing, using, distributing, or consuming tangible personal property and
36 taxable services within the state by this subchapter, there is levied an

1 excise tax of one-half of one percent (0.5%) upon all tangible personal
2 property and taxable services subject to the tax levied in this subchapter
3 except for food and food ingredients that are taxed under § 26-53-145 and
4 agricultural utilities that are taxed under § 26-53-149.

5 (2) The tax shall be collected, reported, and paid in the same
6 manner and at the same time as is prescribed by law for the collection,
7 reporting, and payment of Arkansas compensating taxes.

8 (c)(1) There is levied an additional excise tax of one-half of one
9 percent (0.5%) upon all tangible personal property and taxable services
10 subject to the tax levied by this subchapter except for food and food
11 ingredients that are taxed under § 26-53-145 and agricultural utilities that
12 are taxed under § 26-53-149.

13 (2) The tax shall be collected, reported, and paid in the same
14 manner and at the same time as is prescribed by this subchapter for the
15 collection, reporting, and payment of Arkansas compensating taxes.

16 (d)(1) There is levied an additional excise tax of seven-eighths of
17 one percent (0.875%) upon all tangible personal property and taxable services
18 subject to the tax levied by this subchapter except for food and food
19 ingredients that are taxed under § 26-53-145 and agricultural utilities that
20 are taxed under § 26-53-149.

21 (2) The tax shall be collected, reported, and paid in the same
22 manner and at the same time as is prescribed by this subchapter for the
23 collection, reporting, and payment of Arkansas compensating taxes.

24

25 SECTION 7. Arkansas Code § 26-53-148(a)(4)(B), concerning the natural
26 gas and electricity used by manufacturers, is amended to read as follows:

27 (B) ~~Natural~~ Except as provided in 26-53-149, natural gas
28 and electricity purchased for any other purpose shall be subject to the full
29 compensating use tax levied under §§ 26-53-106 and 26-53-107(a)-(d).

30

31 SECTION 8. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
32 to add an additional section to read as follows:

33 26-53-149. Agricultural utilities.

34 (a) As used in this section:

35 (1) "Qualifying agriculture, horticulture, or aquaculture
36 equipment" means:

1 (A) A cooling unit, a collection unit, or irrigation
2 equipment used in a commercial horticulture operation;

3 (B) Equipment used to pump and aerate a pond used in a
4 commercial aquaculture operation;

5 (C) A holding and sorting tank used in a commercial
6 aquaculture operation; and

7 (D) An on-farm grain dryer and agricultural irrigation
8 used for a commercial purpose;

9 (2) "Qualifying agricultural structure" means:

10 (A) Confinement housing for poultry or livestock used for
11 commercial production, including without limitation a broiler or turkey grow-
12 out house, laying house, hatching unit, nursery unit, breeding house,
13 farrowing unit, and feed-out house; and

14 (B) A commercial milking facility, including without
15 limitation a milking parlor, a milk collection unit, and a refrigeration
16 unit; and

17 (3) "Utility" means:

18 (A) Liquified-petroleum gas;

19 (B) Natural gas; or

20 (C) Electricity.

21 (b)(1) Beginning July 1, 2009, in lieu of the compensating use tax
22 levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on
23 the sales price of a utility delivered by the seller and used by a qualifying
24 agricultural structure for a commercial purpose or a qualifying agriculture,
25 horticulture, or aquaculture equipment for a commercial purpose at the rate
26 of one-eighth percent (0.125%) to be distributed as follows:

27 (A) Seventy-six and six-tenths percent (76.6%) of the
28 taxes, interest, penalties, and costs received by the Director of the
29 Department of Finance and Administration under this subdivision (b)(1) shall
30 be deposited into the State Treasury as general revenues;

31 (B) Eight and five-tenths percent (8.5%) of the taxes,
32 interest, penalties, and costs received by the director under this
33 subdivision (b)(1) shall be deposited into the Property Tax Relief Trust
34 Fund; and

35 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
36 interest, penalties, and costs received by the director under this

1 subdivision (b)(1) shall be deposited into the Educational Adequacy Fund.

2 (2)(A) The excise tax levied in this section shall apply only to
3 a utility sold for use by a qualifying agricultural structure operated for
4 commercial purposes or a qualifying agriculture, horticulture, or aquaculture
5 equipment operated for commercial purposes.

6 (B) Except as provided in § 26-53-148, a utility purchased
7 for any other purpose shall be subject to the full compensating use tax
8 levied under §§ 26-53-106 and 26-53-107(a)-(d).

9 (3) The excise tax levied in this section shall be collected,
10 reported, and paid in the same manner and at the same time as is prescribed
11 by law for the collection, reporting, and payment of all other Arkansas
12 compensating use taxes.

13 (c) A utility subject to the reduced excise tax rate levied in this
14 section shall be separately metered from a utility used for any other purpose
15 by the taxpayer or as otherwise established by the rules issued under
16 subsection (e) of this section.

17 (d) Before the purchase of a utility at the reduced excise tax rate
18 levied in this section, the director may require any seller of a utility to
19 obtain a certificate from the taxpayer, in the form prescribed by the
20 director, certifying that the taxpayer is eligible to purchase the utility at
21 the reduced excise tax rate.

22 (e) The director shall promulgate rules for the proper administration
23 of this section.

24 (f) The compensating use tax derived from the sale of a utility to a
25 taxpayer for use by a qualifying agricultural structure or qualifying
26 agriculture, horticulture, or aquaculture equipment shall continue to be
27 subject to:

28 (1) The excise tax levied under the Arkansas Constitution,
29 Amendment 75, § 2; and

30 (2) All municipal and county compensating use taxes.

31
32 SECTION 9. Arkansas Code Title 26, Chapter 63 is amended to add a new
33 subchapter to read as follows:

34 SUBCHAPTER 5. ADDITIONAL TAX ON AGRICULTURAL UTILITIES.

35 26-64-501. Tax on agricultural utilities.

36 (a) As used in this section:

1 (1) "Qualifying agriculture, horticulture, or aquaculture
2 equipment" means:

3 (A) A cooling unit, a collection unit, or irrigation
4 equipment used in a commercial horticulture operation;

5 (B) Equipment used to pump and aerate a pond used in a
6 commercial aquaculture operation;

7 (C) A holding and sorting tank used in a commercial
8 aquaculture operation; and

9 (D) An on-farm grain dryer and agricultural irrigation
10 used for a commercial purpose;

11 (2) "Qualifying agricultural structure" means:

12 (A) Confinement housing for poultry or livestock used for
13 commercial production, including without limitation a broiler or turkey grow-
14 out house, laying house, hatching unit, nursery unit, breeding house,
15 farrowing unit, and feed-out house; and

16 (B) A commercial milking facility, including without
17 limitation a milking parlor, a milk collection unit, and a refrigeration
18 unit; and

19 (3) "Utility" means:

20 (A) Liquefied-petroleum gas;

21 (B) Natural gas; or

22 (C) Electricity.

23 (b) Beginning July 1, 2009, there is levied an additional excise tax on
24 the sale of a utility delivered by the seller and sold, used, or utilized in
25 this state by a qualifying agricultural structure for a commercial purpose or
26 a qualifying agriculture, horticulture, or aquaculture equipment for a
27 commercial purpose as follows:

28 (1) Three hundred twenty-two one-thousandth cents per kilowatt
29 (.322¢/kW) on electricity;

30 (2) Six hundred two one-thousandth cents per one thousand cubic
31 feet (.602¢/Mcf) on natural gas; and

32 (3) One hundred one one-thousandth cents per gallon (.101¢/gal)
33 on propane gas.

34 (c) The excise taxes levied in subsection (b) of this section shall be
35 deposited as follows:

36 (1) Seventy-six and six-tenths percent (76.6%) of the taxes,

1 interest, penalties, and costs received by the Director of the Department of
2 Finance and Administration under this section shall be deposited into the
3 State Treasury as general revenues;

4 (2) Eight and five-tenths percent (8.5%) of the taxes, interest,
5 penalties, and costs received by the director under this section shall be
6 deposited into the Property Tax Relief Trust Fund; and

7 (3) Fourteen and nine-tenths percent (14.9%) of the taxes,
8 interest, penalties, and costs received by the director under this section
9 shall be deposited into the Educational Adequacy Fund.

10 (d) The excise tax levied in subsection (b) of this section for a
11 month shall be reported by the seller on or before the twentieth day of the
12 following month on forms to be prescribed by the Director of the Department
13 of Finance and Administration.

14 (e) An exemption that applies to the tax levied under § 26-52-322 or §
15 26-53-149 applies to the excise tax levied under subsection (b) of this
16 section,

17
18 SECTION 10. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that agricultural, horticultural,
20 and aquacultural businesses in this state have suffered losses due to sharp
21 increases in energy costs; that these businesses are unable to set the price
22 for the products they produce and are particularly vulnerable to price
23 volatility; that the traditional method of utility taxation has resulted in
24 astronomic increases in the cost to these businesses; that a change in the
25 manner in which tax is paid on utilities is necessary in order to stabilize
26 the tax cost to these businesses; that the current sales and use tax on
27 utilities consumed by these businesses located within this state creates a
28 competitive disadvantage; that this act is intended to address that problem
29 by providing a more stable tax rate on utilities consumed by agricultural,
30 horticultural, and aquacultural businesses located in this state; and that
31 this act is necessary to prevent the loss of agricultural, horticultural, and
32 aquacultural jobs. Therefore, an emergency is hereby declared to exist, and
33 this act being necessary for the preservation of public peace, health, and
34 safety shall become effective on July 1, 2009.

35
36 */s/ L. Cowling*